Supreme Court, U.S.
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No. 86-1419

In the Supreme Court of the United States

OCTOBER TERM, 1987

STATE OF OREGON, DEPARTMENT OF HUMAN RESOURCES; RICHARD C. LADD,

Petitioners,

v.

COOS BAY CARE CENTER, an Oregon Corporation, Guardian Ad Litem; HANNAH SCHWANKE, Guardian Ad Litem for David and Steven Schwanke; and SANDY MAUER, Guardian Ad Litem for Tami Mauer,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

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HIPP

QUESTIONS PRESENTED

1. Whether change of a Medicaid provider's corporate owner moots litigation seeking both retroactive and prospective reimbursement relief when: (1) the claim for retroactive relief remains viable, although the plaintiff chooses to reverse positions on the claim; (2) the new corporate owner operates the same provider facility and is entitled to Medicaid reimbursement pursuant to a Medicaid provider agreement and "heavy care" addendum that are identical to those that are the subject of the litigation; (3) under federal law, the new corporate owner is assigned the former owner's provider status to ensure uninterrupted Medicaid benefits; and (4) the claims of the named plaintiff patients and putative class members are unaffected by the transfer of interest.

2. Whether this Court should dismiss the petition for certiorari on the basis of arguments that do not bear on the court's jurisdiction and that, under Rules 23 and 35, properly should have been but were not raised in opposition to the petition.

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PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Petitioners respectfully urge that the respondents' motion to dismiss the petition for writ of certiorari on grounds of mootness be denied. Alternatively, if the Court is inclined to find some merit in the motion, petitioners ask the court to postpone a ruling on it until oral argument and consideration on the merits. Finally, the nonjurisdictional grounds asserted in support of the motion should be summarily rejected.

ARGUMENT

I. The Controversy in This Case Is Not Moot.

Plaintiffs in this case consist of the former corporate owner of the Coos Bay Care Center, a Medicaid-certified intermediate care facility, and three patients who have resided or continue to reside there.[1] The patients and the former owner have sued the state seeking damages for past Medicaid reimbursement decisions that allegedly violated their federal statutory and constitutional rights; and they seek prospective declaratory and injunctive relief to require the state to reimburse at a higher level in the future. The patients sue both in their individual capacity and as representatives of a putative class of similarly situated patients at care homes throughout the State of Oregon.

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[1] For ease of reference, we refer to the patients themselves as plaintiffs, although their interests in fact are represented through guardians *ad litem*. David and Steven Gibbs, according to the state's records, continue to be patients at the Coos Bay Care Center facility, as implied but not expressly acknowledged in footnote 2 of the motion to dismiss. Tami Watson, also according to the state's records, now resides in an intermediate care facility in Medford, Oregon.

Coos Bay Care Center, Inc. (CBCC Inc.), without the concurrence or the participation of the patient plaintiffs,[2] moves to dismiss the petition for writ of certiorari on the theory that this case is now moot. It relies on the fact that on June 30, 1987, another entity, Southmark Corporation, purchased CBCC Inc.'s interest in the Coos Bay Care Center. CBCC Inc. indicates that, under the terms of the sale, it retains its interest in retroactive relief (damages measured by past under-reimbursement); but it now takes the position that the Eleventh Amendment bars that remedy and it therefore is not entitled to pursue the claim. As to prospective declaratory and injunctive relief, CBCC Inc. urges that the sale terminated any interest it may have had in future Medicaid reimbursement, thereby "mooting" the case.

Despite CBCC Inc.'s efforts to make it appear as though factual changes have mooted this case, the underlying controversy remains as vital as when the original complaint was filed. The factual circumstances that gave rise to this lawsuit are essentially unchanged. Coos Bay Care Center still is a Medicaid-certified intermediate care facility. It still is providing care to Medicaid-eligible patients. The facility continues in the same business, providing care to the same people. The state continues to reimburse for that care pursuant to the same base rate and heavy cost add-on rate policies and practices. Those policies and procedures continue to be applied to intermediate care facilities and their patients throughout Oregon. Nothing has changed except the beneficial ownership of the Coos Bay Care Center.

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[2] Respondent CBCC Inc. is careful in its motion to emphasize that it is filed only on behalf of the corporate plaintiff. *See* Motion to Dismiss, p. 1, n. 1. Evidently, documents to substitute new counsel in representing Hannah Schwanke (guardian *ad litem* for David and Steven Gibbs) are being prepared. *Id.* But counsel for CBCC Inc. does not indicate whether these patients are expected to join in the motion. Apparently, Tami Watson is not expected to be represented by new counsel.

CBCC Inc. builds its case for "mootness" through a variety of devices that do not demonstrate mootness at all. In fact, the motion to dismiss and supporting materials are a transparent attempt to call off an ongoing battle because, from the respondent's perspective, it is going badly. The very fact that CBCC Inc. has committed substantial resources to its effort to avoid an adverse precedent is compelling evidence that the controversy that sparked this case is alive and well. In its motion, CBCC Inc. concedes points on the merits that, before the lower courts, it forcefully resisted. It characterizes the patients' claims in a way that contradicts the position it took previously in this litigation, and in a way that simply is refuted by the complaint's express allegations. It ignores altogether the complaint's class action allegations and the interests of the putative class and the plaintiff representatives. Neither CBCC Inc. nor Southmark Corporation has availed itself of simple procedures for substitution and joinder of parties that are available. Instead, under the guise of "mootness," CBCC Inc. is actually attempting to avoid this Court's resolution of an issue of unquestioned public importance[3] that continues to have concrete significance to the provider, to the patients and to the state.

As demonstrated below, this Court should not grant the motion to dismiss. However, if the Court is inclined to find some merit in the motion at this juncture, we urge the Court to postpone its ruling. The posture of the case, given the variety of plaintiff interests at stake, is sufficiently complex and the factual ambiguities are sufficiently great that the Court should consider the motion after oral argument and along with the merits, as it has done in other cases. *See, e.g., NLRB*

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[3] The level of amicus interest and participation in this case amply demonstrates the importance, to patients, providers and states alike, of a resolution of the issue presented.

v. Insurance Agents' International Union, AFL-CIO, 361 U.S. 477, 500 n. 32 (1960).

A. Factual Background.

We do not question the basic factual information presented to the Court by CBCC Inc. in the motion to dismiss and the attached affidavits. As CBCC Inc. represents, it sold its interests in the Coos Bay Care Center facility on June 30, 1987. Around mid-April, it and the purchaser, Southmark Corporation, initiated the processes for relicensure and reissuance of the provider agreement to Southmark.[4] As we understand it, although the transfer of interest did not occur until the end of June, Southmark in fact assumed management of the facility on April 1, four months before.

Under the terms of the sale agreement, CBCC Inc. retains its interest in all accounts payable accruing prior to April 1, 1987. Amounts accruing after that time apparently are Southmark's. Thus, although CBCC Inc. argues that it alone holds an interest in amounts owed to the care center during the period of its ownership, that does not appear to be entirely the case. Moreover, the agreement expressly provides that all amounts owed by governmental agencies under governmental reimbursement programs are first due to CBCC Inc. with respect to outstanding amounts due to it for each patient covered by the payment and "thereafter to such amounts as

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[4] In footnote 5 of the motion, CBCC Inc. suggests that "petitioners" were notified of the intent to sell on several occasions, beginning in late March. The ambiguous reference to "petitioners" suggests that perhaps the Oregon Attorney General, shortly after filing the petition for certiorari in this case, was so notified. That is not the case. CBCC Inc. notified the client agency for the sole purpose of beginning the routine paperwork that would result in transfer of the provider agreement to the new corporate owner. As counsel for the agency in this litigation, we were not advised of the transfer of interest until some time after the sale, while we were in the final stages of preparation of our brief on the merits. We were then contacted by new counsel for CBCC Inc. who informed us of the recent sale and the fact that the representation was to be transferred to them. We received no formal confirmation of those facts from either the present or former counsel prior to the filing of the motion to dismiss.

are due to Purchaser." (*See* verbatim portion of sale agreement, quoted in Joint Affidavit, Motion to Dismiss at 7a).

In addition to the factual information discussed by CBCC Inc. in its motion, there are further relevant facts apparent from the information CBCC Inc. sets out and available through the state's records. It does not appear that there has been any significant change in the care center's business operations, its staff or its patients. The care center continues to be a certified Medicaid provider. In fact, Southmark is operating the facility pursuant to the certification obtained by CBCC Inc. As discussed *infra*, it is entitled to do so pursuant to federal regulations until that certification expires. In anticipation of the transfer of ownership, Southmark sought relicensing of the facility to carry on the same patient services previously provided by CBCC Inc. As acknowledged by CBCC Inc. (*See* Decker Affidavit at 12a), relicensing is a routine, administrative matter upon transfer of ownership. The state agency has issued to Southmark a provider agreement and heavy cost addendum that, in all material respects, are identical to those previously issued to CBCC.[5] These agreements are attached as Appendixes A and B to this brief. The agreements differ only in that they substitute Southmark's corporate ownership interests for those of CBCC Inc. Southmark will be entitled to the same provider rates as were applied to CBCC Inc. and the provider agreement is dated so that it is in force for the full time period remaining under CBCC Inc.'s agreement.

Two of the three patient plaintiffs and class representatives, David and Steven Gibbs, continue to reside in Coos

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[5] The provider agreement with Southmark actually was issued to "Coos Bay Associates Limited Partnership." *See* Appendix A. Southmark is referred to in this brief instead of Coos Bay Associates because, as respondents note in their motion, page 4, Southmark controls Coos Bay Associates.

Bay Care Center. There is nothing in the state agency's records to suggest that their care needs or status have changed in any way, and CBCC Inc. does not assert any change. The state's records further reflect, as CBCC Inc. points out (Motion to Dismiss, n. 2), that Tami Watson no longer is a patient at Coos Bay Care Center. However, she continues to reside in an Oregon intermediate care facility certified as a Medicaid provider. The facility operates under the same standard provider agreement and heavy cost addendum involved in this lawsuit, and Tami Watson now is listed as a heavy cost-eligible patient.

Finally, even the staff of the care home appears to have remained largely the same. For example, Robert M. Decker previously was Executive Vice President of Chartham Management, a company apparently connected with and which managed the facility for CBCC Inc. (*See* Decker and Eybee Affidavits, Motion to Dismiss). On April 1, 1987, before the transfer of interest but simultaneous with Southmark's assumption of the facility's management, Robert Decker became a Vice-President of National Heritage, Inc., the subsidiary of Southmark that assumed (and retains) that management responsibility. Mr. Decker continues in that capacity. (*See* Decker Affidavit, Motion to Dismiss at 10a-11a).

B. The Claims for Retrospective Relief.

The change in the care facility's corporate ownership does not even arguably extinguish any of the plaintiffs' or the putative classes' interest in damages based on alleged under-reimbursement. CBCC Inc. does not assert that the claims for restrospective relief are moot. Instead, it takes the legal position that the Eleventh Amendment bars a federal court from awarding monetary damages out of a state's treasury. Its argument, however, confuses the question of its entitlement to relief with the question of whether a change of facual circum-

stances has eliminated the existence of a legally cognizable controversy.

"Mootness" simply is the wrong analytic label. CBCC Inc.'s position on the Eleventh Amendment question demonstrates only that it no longer believes in the legal position that it advanced before the lower courts in this case. Indeed, it pressed the opposite argument at some length before the Ninth Circuit (Reply Br. at pp. 14-18), and prevailed. Without even acknowledging the inconsistency between its present and prior positions, it now reverses itself and essentially concedes that the state is and was correct all along. But the Eleventh Amendment issue goes to the merits of whether the district court correctly dismissed the complaint for failure to state a cause of action, and whether the Ninth Circuit correctly reversed that judgment and remanded this case for trial. The Eleventh Amendment thus goes to the *substantive* question of the district court's jurisdiction, rather than to this Court's jurisdiction to review that issue. To view a concession on a legal controversy as "mooting" the case would mean that litigants freely could manipulate this Court's jurisdiction merely by altering their legal arguments on certiorari review. That cannot be correct. *Cf. City of Mesquite v. Alladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982) (mere voluntary cessation of a challenged practice does not deprive a federal court of power to determine the legality of the practice). While the state unquestionably agrees with the substance of CBCC Inc.'s Eleventh Amendment argument, the issue cannot be decided as one of "mootness."

Moreover, at this juncture, the position of the patient plaintiffs, both individually and in their representative capacity, must be assumed to be unchanged—*i.e.*, that they are entitled to retrospective relief. And although CBCC Inc. asserts that it has retained all interest in the "accounts payable," and thus in any damages claim, that is not at all

clear. The express provisions of the agreement appear to assign those rights to Southmark for the four-month period that CBCC Inc.'s ownership continued but Southmark managed the facility. If this complaint were dismissed today, Southmark could freely sue the state tomorrow on essentially the same factual allegations and the identical legal theories advanced originally by CBCC Inc. In short, the facts giving rise to this controversy are not significantly changed and CBCC Inc.'s change of legal theories does not drain this case of its importance in determining the parties' rights and liabilities.

C. The Claims for Prospective Relief.

1. CBCC Inc.'s interests.

On the question of injunctive and declaratory relief, CBCC Inc. correctly points out that the sale of the care facility terminated any prospective interest it had in future Medicaid reimbursement levels. Thus, it argues that it no longer is suffering any ongoing injury from the state's conduct and has no claim which can be remedied by prospective relief, thereby mooting the litigation.

Notwithstanding the superficial appeal this argument may have at first glance, given the actual circumstances, at most there is a basis for the substitution or joinder of Southmark as a party. Under Federal Rule of Civil Procedure 25(c),[6] an action may be continued by or against the original party, notwithstanding the transfer of interest. Alternatively, the court upon motion may direct the person to whom the interest is transferred to be substituted or joined with the original party. Thus, if this case were returned to the district court for

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[6] Federal Rule of Civil Procedure 25(c) provides:

> In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

trial, CBCC Inc. despite the transfer would be able to maintain its action, although either plaintiffs or the state could move to have Southmark joined or substituted as a party.[7]

As the rule implicitly recognizes, litigation is not "mooted" by a transfer of interest alone. Yet that is all that has occurred here, both as a matter of fact and as a matter of law. Under the governing federal regulations, states are required to place the new owner in the exact position of the former owner. 42 C.F.R. § 442.14(a) provides:

> When there is a change of ownership, the Medicaid agency must automatically assign the agreement to the new owner.

Subsection (b) of the same federal rule further requires that the new owner is assigned the agreement subject to "the terms and conditions under which it was originally issued" including any special corrective conditions attached to the original agreement and the original agreement's expiration date.[8]

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[7] Under CBCC Inc's analysis, this case is moot because the plaintiff chooses not to pursue a claim where the federal rules expressly permit it to do so. If CBCC Inc. wished to press its claim despite the transfer of interest, defendants could not cause the case to be dismissed as moot. At most, defendants could seek joinder of Southmark. Thus, application of the mootness doctrine should not be dependent on one party's decision regarding litigation strategy.

[8] 42 C.F.R. § 442.114(b) states:

> An assigned agreement is subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued, including, but not limited to, the following:
>
> (1) Any existing plan of correction.
>
> (2) Any expiration date.
>
> (3) Compliance with applicable health and safety standards.
>
> (4) Compliance with the ownership and financial interest disclosure requirements of §§ 455.104 and 455.105 of this chapter.
>
> (5) Compliance with civil rights requirements set forth in 45 CFR Parts 80, 84, and 90.
>
> (6) Compliance with any additional requirements imposed by the Medicaid agency.

Accordingly, here, Southmark has simply stepped into CBCC's shoes. The facility's certification as a Medicaid provider, one of the most important Medicaid procedural hurdles to clear, is unchanged. Southmark will operate under that certification just as did CBCC Inc. until the annual renewal comes due. Consistent with the federal regulation, the state agency has assigned CBCC Inc.'s provider agreement to Southmark. Thus, as a routine administrative matter, the state has issued in Southmark's name a standardized provider agreement and heavy cost addendum identical to those previously in place when CBCC Inc. was the beneficial owner.

Although CBCC Inc. chooses to characterize this as a "new" provider agreement, it is new only in the sense that it now reflects the recent purchaser's ownership interests. The transfer of interest between CBCC Inc. and Southmark therefore simply is not a fact that extinguishes the prospective interests at stake in this litigation. None of the relevant facts has changed. The business (Coos Bay Care Center) continues to be a certified Medicaid intermediate care facility. It continues to care for quadriplegic patients, and it continues to be entitled to the heavy cost add-on to its rate for those patients who qualify under the state's Medicaid program. The state's Medicaid plan provisions and heavy cost policies and practices have not changed. In short, to whatever extent the plaintiffs have ever had an actionable federal claim for a particular reimbursement level for certain patients (which is the issue to be resolved in this case), the facts giving rise to that claim are unchanged.

It may be that if this case were returned to the district court for trial, neither CBCC Inc. nor Southmark would choose to devote their resources to pursuing their claims. But their ability voluntarily to dismiss the suit at the trial level is beside the point. There should be no question that the "underlying question persists and is agitated by the continuing

activities and program of petitioners. . . ." *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 179 (1968). Under such circumstances, the mere transfer of ownership interest in the Coos Bay Care Center does not moot this controvery. *Cf. De Veau v. Braisted*, 363 U.S. 144, 146 n. 1 (1960) (labor controversy not mooted by fact that original union was disbanded and all employees under its jurisdiction came under the jurisdiction of a new local); *NLRB v. Insurance Agents*, 361 U.S. at 500 n. 32 (merger of respondent union with another union did not moot labor dispute; court would treat both unions as parties on review).

2. The patient plaintiffs' individual and representative interests.

In support of its mootness arguments, CBCC Inc. says very little about the individual patient plaintiffs, and all but ignores the class action allegations of the complaint. By way of footnote, CBCC Inc. simply attempts to dismiss the patient plaintiffs' claims as dependent on their status as "third party beneficiaries of the now-terminated provider contract." (Motion to Dismiss, n. 8). This ignores the unequivocal allegations of the complaint and also the position that plaintiffs, including CBCC Inc., have taken in the lower courts and before this Court.

In their complaint, plaintiffs alleged that "David and Steven Schwanke [*sic*] and Tami Mauer [*sic*] are third party beneficiaries of this agreement and may maintain an action upon it." (Complaint, J.A. at 4). That allegation was necessary in order for those plaintiffs to join in the pendent state breach of contract claim, set out as plaintiffs' second cause of action. But the complaint went on to allege that the patient plaintiffs are heavy care patients; that "heavy care" patients are those who require significantly more or greater care than ordinary patients due to medical or developmental problems; that there are a number of heavy care patients at Coos Bay

Care Center and similar institutions throughout Oregon; and that these patients do not receive appropriate care due to the state's refusal to reimburse health care providers appropriately for their care. (*Id.* at 5-6). Plaintiffs added in their class action allegations that they are representative of a class of heavy care patients that exceeds 100 patients statewide. (*Id.* at 7).

On their individual behalves and on behalf of the putative class, plaintiffs pleaded that the state's reimbursement policies directly violated their federal statutory and constitutional rights. (*Id.* at 6). In the lower courts, plaintiffs urged that the patients have an independent right under federal law to sue over Medicaid reimbursement levels,[9] and they prevailed on that argument in the Ninth Circuit.[10] Moreover, they vigorously reasserted that position before this Court in opposing the petition for writ of certiorari.[11] CBCC Inc.'s position in the motion to dismiss is thus at odds with the position that it has taken at every other stage of this case. CBCC Inc.'s attempts to disassociate itself with its own pleadings and legal arguments in an effort to moot this case are disingenuous at best.

The individual plaintiffs have not joined in CBCC Inc.'s arguments. They do not disclaim either their right or intention to pursue both prospective and retroactive relief, on their own or the putative class's behalf. Nor is there any theory on which the transfer of corporate ownership could moot their claims. At most, David and Steven Gibbs would have to amend the complaint to refer to the new corporate owner where relevant references to CBCC Inc. previously appeared. Tami Watson's interests in prospective relief may

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[9] *See, e.g.*, App. Br. at pp. 16-28; Reply Br. at p. 4.

[10] *See* Pet. App. at pp. App-4 - App-5.

[11] *See, e.g.*, Br. Opp. at pp. 4, 8 and 12.

now be moot, given her classification as a heavy cost patient, but her claim for damages is not. CBCC Inc. has not presented the Court with any basis upon which to conclude that those patients do not have a continuing personal stake in their individual claims, and has not suggested why they cannot continue as representatives of the putative class. Nor has CBCC Inc. pointed to any theory on which the putative class interests in this litigation are extinguished. CBCC Inc. mentions only that the class "does not appear" to have been certified. (Motion to Dismiss, n. 3). Certification, however, was never denied. The complaint was dismissed for failure to state a claim; the district court never reached the issue of certification. For present purposes, the action must be assumed to be properly pleaded as a class claim. *See, e.g., Gatling v. Butler*, 52 F.R.D. 389, 395 (D. Conn. 1971) (citing cases); *Washington v. Wyman*, 54 F.R.D. 266, 270-71 (S.D. N.Y. 1971) (same). So long as the patients' representational interests are not moot, they may continue to press the class claim. *See generally United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980). Thus, the patient plaintiffs continue to have an unquestioned interest in resolving this controversy, both individually and as class representatives.

Accordingly, the change of corporate owners simply is not a fact that completely and irrevocably eradicates the prospective interests of the patients or the provider. CBCC Inc.'s disinclination to seek to substitute the new corporate owner as a party should not be permitted to frustrate this Court's review; nor should that result follow from CBCC's willingness to ignore the interests that the patients, individually and as putative class representatives, have asserted from the outset. The state's regulations, policies and practices for heavy cost reimbursement are unchanged. The only real change is in CBCC Inc.'s and the new provider's strategy in pursuing their claims before this Court. That strategy should not

impede review of an actual controversy of unquestioned public importance and it should not divest the state of the opportunity to regain the benefit of a judgment that was correctly entered and would have important *res judicata* and *collateral estoppal* effects if reinstated today.

II. None of the Other Arguments Advanced by CBCC Inc. are Properly Raised.

CBCC Inc.'s remaining arguments are not properly raised or before the Court. The arguments urge that certain issues either were not preserved below or were not clearly reached or decided by the lower courts, and that the case therefore does not warrant this Court's review. All of the arguments are predicated on wrong characterizations of the record, misunderstandings of the issues presented, and incorrect conclusions about the lower court's opinion and the effect its opinion has on the issues this court appropriately may reach.

More important, however, for purposes of this motion, none of these arguments bears on jurisdiction; all are matters that could have been advanced in the plaintiffs' Brief in Opposition to the Petition for Writ of Certiorari, but were not. Under this Court's rules, they are improperly raised in the motion to dismiss. *See* S. Ct. Rules 22.3 and 35.5. They therefore should be summarily rejected.

CONCLUSION

For the reasons set forth above, respondent Coos Bay Care Center, Inc.'s motion to dismiss the writ of certiorari should be denied.

Respectfully submitted,
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APPENDIX A

Nuring Facility Contract

Part 1. Signators

This contract is between the State of Oregon, by and through the Department of Human Resources, Senior Services Division, hereinafter referred to as the "Division" in order to procure Nursing Facility services and

COOS BAY ASSOCIATES LIMITED PARTNERSHIP

Coos Bay Care Center

2625 Koos Bay Blvd.

Coos Bay, OR 97420

hereinafter referred to as "Contractor."

This ☐ SNF contract ☒ ICF contract ☐ extension ☒ Heavy Cost addendum ☐ Contiguous Area contract begins 07-01-87 and ends 10-31-87; however, it is not effective until signed by the Senior Services Division of the State of Oregon.

The following listed parts, together with attachments referred to therein and attached, form the whole of this contract.

Contract Documents

Place an X in the appropriate box(es):

- ☒ Part 1. Signators.
- ☒ Part 2. Skilled Nursing Facility and/or intermediate Care Facility Contract Conditions, paragraphs 1 through 9, pages 1 through 6 attached.
- ☐ Part 3. Extension of Nursing Facility Contract, paragraph 1 attached.
- ☒ Part 4. Heavy Cost Addendum, paragraphs 1 through 2 attached.
- ☐ Part 5. Area contiguous to Oregon, conditions, 1 page attached.

[Signatures and copy distribution omitted in printing]

PART 2
SKILLED/NURSING INTERMEDIATE CARE

1. Definitions: Nursing Facility, as used in this part, means a Skilled or Intermediate Care Facility, licensed and certified to provide care under Federal and State laws, rules and regulations under Title XVIII or Title XIX.

2. Pursuant to ORS 184-750, the Department of Human Resources, through Adult and Family Services Division (AFS), is the agency responsible for administering the Medical Assistance Program (Title XIX) in Oregon. By agreement, the Senior Services Division administers the Title XIX Long-Term Care Services Program.

3. Section 1902(a)(27) of Title XIX of the Social Security Act requires a state to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance. The purpose of this agreement is to assure that the facility is providing services appropriate to the needs of the clients in return for payment by the agency for services purchased and provided.

4. To participate in the Oregon Medical Assistance Program (Title XIX) a Nursing Facility must: (1) be licensed at the appropriate skill level as a nursing facility or hospital under the laws of Oregon; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a licensed nursing facility administrator who holds a current Oregon license or by a hospital administrator; and (4) be 100% Medicaid certified or as specified in OAR 411-70-010 and meet on a continuing basis federal standards for participation in the Title XIX Medical Assistance Program. All conditions apply to clients who are receiving assistance under Title XIX or the General Assistance Program.

5. Contractor has filed an application with the State Senior Services Division to provide, as a Nursing Facility, health-related care and services to any and all persons eligible, and referred by SSD/AAA for the Title XIX Medical Assistance Program. The approved application is attached hereto and by this reference made a part of this Agreement.

CONTRACTOR AGREES TO:

A. Comply with all Oregon Administrative Rules and state statutes applicable to the operation of Nursing Facilities under the Title XIX Long-Term Care Facility Services Program.

B. Comply with all applicable sections of the Title XIX Social Security Act and amendments thereto and applicable regulations.

C. Inform Division/Type B Area Agency on Aging (AAA) in writing on the day of admittance or discharge when clients covered under the Title XIX Program are admitted to and discharged from the Nursing Facility.

D. Notify Division/Type B AAA on the first working day after transfer of the client to an acute care hospital and prior to therapeutic leave.

E. Notify Division/Type B AAA in writing on the date the license is changed or of any change in operating license issued by the State Senior Services Division.

F. Meet the requirement of Residents' Bill of Rights as outlined in 42 CFR 442.311.

G. Provide cooperative methods and procedures relating to the utilization of care and services, as may be necessary to safeguard against unnecessary utilization of such care and services.

H. Submit annual cost statements within the established time limits and using the forms and instructions specified in the Title XIX Long-Term Care Facility Services Guide.

I. Submit billings for clients covered by this Agreement showing correct resident day counts, resident income, and payment rates consistent with dates and amounts, prior authorized by the Division/Type B AAA.

J. Contractor will maintain detailed, complete, and accurate records of the care provided and the costs of the care. Records of services and costs will be made avail-

able to the Division upon request, including information requested by telephone. The Division/Type B AAA has the right to photocopy any records, including incident reports and personnel records, deemed by the division necessary to carry out state and federal statutes and rules. The Contractor shall retain medical records for a minimum of seven years and financial records for a minimum of three years or from the date all audit questions have been resolved, whichever period is the longest. Records will include at least the following:

1) Records as required by Section 1905(c) and (d) of Title XIX of the Social Security Act and any amendments thereto;

2) Records of all treatments, drugs, and services for which Contractor has been or is to be paid under the Title XIX Program, including the authority for and the date of administration of such treatment, drugs, or services;

3) All other records as may be found necessary by Division in compliance with any federal or state law, rule, or regulation promulgated by the United States Department of Health and Human Services, or by the Division, or as a result of a judicial action.

K. Provide access to residents as may be found necessary by Division/Type B AAA to comply with state and federal laws, rules, and regulations. This includes professional review organizations contracting with the Division.

L. Accept payment from the Division as payment in full for those services, goods, and products included in the all-inclusive per diem rate, with the understanding that: Whosoever knowingly and willfully: (1) charges for any such service, goods, or products in excess of the all-inclusive per diem rate established by the Division; or (2) charges, solicits, accepts or receives, in addition to the amount paid by the Division, any gift, money, donation, or other consideration as a pre-condition of admitting a client to a Nursing Facility, or as a require-

ment for the client's continued stay in such a facility, shall be guilty of a (federal) felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years or both.

M. Division may withhold payment because of violation of this Agreement by Contractor until the violation is remedied. If violations are not remedied in the time specified by Division in the violation notice, Division may terminate this Agreement upon 30 days' written notice.

N. Not to employ any person in a management or supervisory capacity who has been convicted of a criminal offense involving Medicaid or Medicare laws, rules, or regulations.

O. Assure that neither Contractor nor its employes shall aid, abet, or engage in any act detrimental to the health, safety, or welfare of the clients or in the abuse of clients under its care; nor shall Contractor hire or retain in employment persons whom it knows or should know were convicted for such practices.

P. Meet conditions for participation as a Nursing Facility required by Federal Regulations 42 CFR 442.101 and 442.300, and meet CFR 442.311 and 442.320 relating to patient rights and protection of patient funds.

Q. Notify the Division/Type B AAA of any client acquiring a change in level of nursing facility care, and cooperate with the division/AAA in making alternative plans with the client.

R. Comply with Title VI, Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

S. Comply with Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in Department of Labor Regulation 41 CFR Part 60. All subcontracts shall also comply with these provisions.

T. Maintain fiscal records and other records pertinent to this contract. All fiscal records shall be maintained

pursuant to accepted accounting standards and other records shall be maintained to the extent necessary to clearly reflect actions taken. Contractor further agrees to provide access to any books, documents, papers, and records of Contractor which are pertinent to this contract and, further, to allow the making of excerpts, transcripts, or performing audits or examinations thereof. Such access shall be freely allowed to state and federal personnel and their duly authorized agents.

All such records shall be retained and kept accessible for three years following final payment and conclusion of all pending matters. All subcontracts shall also comply with these provisions.

In addition, Contractor and its agents, employes, and subcontractors shall maintain all such records fully confidential. Such confidential status shall be in compliance with the requirements stated in 45 CFR 205.50 and 42 CFR 431 subpart F.

U. Abide by all mandatory standards and policies which relate to energy effeciency and which are contained in the State of Oregon energy conservation plan which was issued in compliance with the Energy Policy and Conservation Act (PL 94-165). All subcontracts shall also be in compliance with the foregoing.

V. Ensure that if the sum payable under this contract exceeds or may exceed $100,000, the Contractor shall provide the State of Oregon a written assurance the Contractor will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act ($2 [*sic*] USC 1857 H) Section 508 of the Clean Water Act (33 USC 1368) Executive Order 11738 and Environmental Protection Agency regulation (40 CFR Part 15), and further, Contractor agrees to promptly report all infractions to the State of Oregon, the Federal Grantor Agency, and to the U.S. Environmental Protection Agency. All subcontracts shall also be in compliance with these provisions.

7. DIVISION AGREES TO:

A. Make payments to Contractor in accordance with all Oregon Administrative Rules applicable to Nursing

Facilities under the Title XIX Long-Term Care Facility Services Program, as soon as feasible after a proper claim is submitted and approved.

B. Give Contractor reasonable notice in writing of any change related to the Division Title XIX Medical Assistance Program that will affect Contractor.

8. DIVISION/TYPE B AAA AGREES TO:

A. Prior authorize payments for clients for whom the division is requesting service.

B. Furnish copies of service/financial plans to the contractor.

C. Update eligibility/payment file to assure correct payment.

9. CONTRACTOR AND DIVISION MUTUALLY AGREE THAT:

A. If federal and/or state laws are amended, repealed or judicially interpreted so as to render fulfillment of this Agreement by either party not beneficial or impossible to perform, both Contractor and Division are discharged from further obligation created under terms of this Agreement, except for equitable settlement of possible overpayments or underpayments up to the date of the termination.

B. This Agreement shall remain in effect only as long as Contractor remains licensed and certified by the State Senior Services Division.

C. This Agreement may also be terminated either by mutual consent of the Division and the Contractor, or without cause, upon 30 days' written notice by either party.

D. If Contractor's certification is voluntarily or involuntarily terminated, the Division/Type B AAA agrees to assist all Title XIX clients in moving from the decertified beds, provided that the Contractor has secured prior consent from the clients and/or their guardian. In all cases, however, the Division will discontinue

payment for Contractor's services no later than 30 days subsequent to the termination of this Agreement.

E. If the Division has determined that a facility is deficient in areas relating to patient care or if the Division has made a determination of potential decertification (see Rule 416-17-090), *no* payment will be made under this Agreement by the Division for clients admitted to the facility after a date specified by the Division and until such time that the division determines that deficiencies have been corrected.

F. If Contractor does not correct deficiencies in accordance with Contractor's written plan of correction submitted to and approved by the Division, this Agreement may be terminated upon written notice.

G. Contractor shall upon written notice from Division take immediate steps to terminate any employe that in Division's judgement is a threat to the health, safety, or welfare of any client in Contractor's facility covered by this Agreement. Termination of facility employe'(s) shall be according to facility personnel policy and procedures.

H. Contractor must notify Division at least 30 days before sale or lease of the facility and provide the name of the buyer/lessee and names, addresses, and phone numbers of owners of the business entity buying or leasing the facility covered by this Agreement.

I. No payment to buyer or lessee of the facility will be made until buyer or lessee has received a new license, certification, and a contract from the Senior Services Division.

J. The conviction of the Contractor, or anyone having an ownership interest in the facility, of a criminal act involving Medicaid of Medicare laws, rules, or regulations will be grounds for termination of this Agreement by the Division.

K. Any breach or violation of any of the foregoing provisions shall make this Agreement subject to termination upon 30 days' written notice by the Division.

L. Division may recoup money paid to the contractor if the Division determines that services contracted for were not provided or were not provided in an acceptable manner. If recoupment is made, the amount recouped shall not be recovered in the year-end settlement.

M. Amounts due to or from the facility from an audit settlement are payable within 30 days of receipt of the audit report. Amounts not paid to the Division within 30 days will be recouped from the next monthly vendor payment, unless an extended payment plan is approved.

PART 4
ADDENDUM TO AGREEMENT FOR PARTICIPATION IN THE TITLE XIX HEAVY COST PROGRAM CONDITIONS

1. Definitions: Nursing facility, as used in this part, means a Skilled or Intermediate Care Facility, licensed and certified to provide care under Federal and State laws, rules and regulations under Title XVIII or Title XIX.

2. This addendum is the agreement for participation in the Title XIX Heavy Cost Program, between the State of Oregon acting through its Department of Human Resources, Senior Services Division, and the Nursing Facility, hereinafter referred to as contractor. Said contract is amended as follows:

   a. Division agrees to pay Contractor a special daily rate established by Division for the care of individuals identified by Division as eligible for "heavy cost" care. The client must occupy a bed certified by the State Senior Services Division and covered by an agreement with the Division. The "heavy cost" payment for an eligible client is in effect for a period specified by Division and extension will be reassessed as determined by Division. Contractor agrees to provide supplies and services included in the all-inclusive rate, as specified in the Title XIX Long-Term Care Facility Services Guide. In addition, Contractor will provide all exceptional nursing or personal services as required based on an assessment by the Division. The "heavy cost" rate does not include those medical services; i.e., physician, physical therapy, pharmacy, dental, etc., paid through Title XIX, Title XVIII, Veterans Administration, etc., and personal incidental items authorized for payment from the client's personal incidental allowance (see Rule 461-17-160). The heavy cost rate will be the rate established either for skilled (SNF) or intermediate (ICF) level of care.

   b. Contractor will maintain detailed, complete, and accurate records of the care provided and the costs of the

care. Records of services and costs will be made available to the Division upon request.

c. The modification, cancellation, or continuation of the arrangement set forth in this addendum will be the responsibility of Division to renegotiate with the Contractor.

[Legal sufficiency approval signatures omitted in printing]

APPENDIX B

Nuring Facility Contract

Part 1. Signators

This contract is between the State of Oregon, by and through the Department of Human Resources, Senior Services Division, hereinafter referred to as the "Division" in order to procure Nursing Facility services and

COOS BAY CARE CENTER
2625 Koos Bay Blvd.
Coos Bay, OR 97420

hereinafter referred to as "Contractor."

This ☐ SNF contract ☒ ICF contract ☐ extension ☒ Heavy Cost addendum ☐ Contiguous Area contract begins 01-01-87 and ends 10-31-87; however, it is not effective until signed by the Senior Services Division of the State of Oregon.

The following listed parts, together with attachments referred to therein and attached, form the whole of this contract.

Contract Documents

Place an X in the appropriate box(es).

- ☒ Part 1. Signators.
- ☒ Part 2. Skilled Nursing Facility and/or intermediate Care Facility Contract Conditions, paragraphs 1 through 9, pages 1 through 6 attached.
- ☐ Part 3. Extension of Nursing Facility Contract, paragraph 1 attached.
- ☒ Part 4. Heavy Cost Addendum, paragraphs 1 through 2 attached.
- ☐ Part 5. Area contiguous to Oregon, conditions, 1 page attached.

[Signatures and copy distribution omitted in printing]

PART 2
SKILLED/NURSING INTERMEDIATE CARE

1. Definitions: Nursing Facility, as used in this part, means a Skilled or Intermediate Care Facility, licensed and certified to provide care under Federal and State laws, rules and regulations under Title XVIII or Title XIX.

2. Pursuant to ORS 184-750, the Department of Human Resources, through Adult and Family Services Division (AFS), is the agency responsible for administering the Medical Assistance Program (Title XIX) in Oregon. By agreement, the Senior Services Division administers the Title XIX Long-Term Care Services Program.

3. Section 1902(a)(27) of Title XIX of the Social Security Act requires a state to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance. The purpose of this agreement is to assure that the facility is providing services appropriate to the needs of the clients in return for payment by the agency for services purchased and provided.

4. To participate in the Oregon Medical Assistance Program (Title XIX) a Nursing Facility must: (1) be licensed at the appropriate skill level as a nursing facility or hospital under the laws of Oregon; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a licensed nursing facility administrator who holds a current Oregon license or by a hospital administrator; and (4) be 100% Medicaid certified or as specified in OAR 411-70-010 and meet on a continuing basis federal standards for participation in the Title XIX Medical Assistance Program. All conditions apply to clients who are receiving assistance under Title XIX or the General Assistance Program.

5. Contractor has filed an application with the State Health Division to provide, as a Nursing Facility, health-related care and services to any and all persons eligible, and referred by SSD/AAA for the Title XIX Medical Assistance Program. The approved application is attached hereto and by this reference made a part of this Agreement.

CONTRACTOR AGREES TO:

A. Comply with all Oregon Administrative Rules and state statutes applicable to the operation of Nursing Facilities under the Title XIX Long-Term Care Facility Services Program.

B. Comply with all applicable sections of the Title XIX Social Security Act and amendments thereto and applicable regulations.

C. Inform Division/Type B Area Agency on Aging (AAA) in writing on the day of admittance or discharge when clients covered under the Title XIX Program are admitted to and discharged from the Nursing Facility.

D. Notify Division/Type B AAA on the first working day after transfer of the client to an acute care hospital and prior to therapeutic leave.

E. Notify Division/Type B AAA in writing on the date the license is changed or of any change in operating license issued by the State Health Division.

F. Meet the requirement of Residents' Bill of Rights as outlined in 42 CFR 442.311.

G. Provide cooperative methods and procedures relating to the utilization of care and services, as may be necessary to safeguard against unnecessary utilization of such care and services.

H. Submit annual cost statements within the established time limits and using the forms and instructions specified in the Title XIX Long-Term Care Facility Services Guide.

I. Submit billings for clients covered by this Agreement showing correct resident day counts, resident income, and payment rates consistent with dates and amounts, prior authorized by the Division/Type B AAA.

J. Contractor will maintain detailed, complete, and accurate records of the care provided and the costs of the care. Records of services and costs will be made avail-

able to the Division upon request, including information requested by telephone. The Division/Type B AAA has the right to photocopy any records, including incident reports and personnel records, deemed by the division necessary to carry out state and federal statutes and rules. The Contractor shall retain medical records for a minimum of seven years and financial records for a minimum of three years or from the date all audit questions have been resolved, whichever period is the longest. Records will include at least the following:

1) Records as required by Section 1905(c) and (d) of Title XIX of the Social Security Act and any amendments thereto;

2) Records of all treatments, drugs, and services for which Contractor has been or is to be paid under the Title XIX Program, including the authority for and the date of administration of such treatment, drugs, or services;

3) All other records as may be found necessary by Division in compliance with any federal or state law, rule, or regulation promulgated by the United States Department of Health and Human Services, or by the Division, or as a result of a judicial action.

K. Provide access to residents as may be found necessary by Division/Type B AAA to comply with state and federal laws, rules, and regulations. This includes professional review organizations contracting with the Division.

L. Accept payment from the Division as payment in full for those services, goods, and products included in the all-inclusive per diem rate, with the understanding that: Whosoever knowingly and willfully: (1) charges for any such service, goods, or products in excess of the all-inclusive per diem rate established by the Division; or (2) charges, solicits, accepts or receives, in addition to the amount paid by the Division, any gift, money, donation, or other consideration as a pre-condition of admitting a client to a Nursing Facility, or as a require-

ment for the client's continued stay in such a facility, shall be guilty of a (federal) felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years or both.

M. Division may withhold payment because of violation of this Agreement by Contractor until the violation is remedied. If violations are not remedied in the time specified by Division in the violation notice, Division may terminate this Agreement upon 30 days' written notice.

N. Not to employ any person in a management or supervisory capacity who has been convicted of a criminal offense involving Medicaid or Medicare laws, rules, or regulations.

O. Assure that neither Contractor nor its employes shall aid, abet, or engage in any act detrimental to the health, safety, or welfare of the clients or in the abuse of clients under its care; nor shall Contractor hire or retain in employment persons whom it knows or should know were convicted for such practices.

P. Meet conditions for participation as a Nursing Facility required by Federal Regulations 42 CFR 442.101 and 442.300, and meet CFR 442.311 and 442.320 relating to patient rights and protection of patient funds.

Q. Notify the Division/Type B AAA of any client acquiring a change in level of nursing facility care, and cooperate with the division/AAA in making alternative plans with the client.

R. Comply with Title VI, Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

S. Comply with Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in Department of Labor Regulation 41 CFR Part 60. All subcontracts shall also comply with these provisions.

T. Maintain fiscal records and other records pertinent to this contract. All fiscal records shall be maintained

pursuant to accepted accounting standards and other records shall be maintained to the extent necessary to clearly reflect actions taken. Contractor further agrees to provide access to any books, documents, papers, and records of Contractor which are pertinent to this contract and, further, to allow the making of excerpts, transcripts, or performing audits or examinations thereof. Such access shall be freely allowed to state and federal personnel and their duly authorized agents.

All such records shall be retained and kept accessible for three years following final payment and conclusion of all pending matters. All subcontracts shall also comply with these provisions.

In addition, Contractor and its agents, employes, and subcontractors shall maintain all such records fully confidential. Such confidential status shall be in compliance with the requirements stated in 45 CFR 205.50 and 42 CFR 431 subpart F.

U. Abide by all mandatory standards and policies which relate to energy effeciency and which are contained in the State of Oregon energy conservation plan which was issued in compliance with the Energy Policy and Conservation Act (PL 94-165). All subcontracts shall also be in compliance with the foregoing.

V. Ensure that if the sum payable under this contract exceeds or may exceed $100,000, the Contractor shall provide the State of Oregon a written assurance the Contractor will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act ($2 [*sic*] USC 1857 H) Section 508 of the Clean Water Act (33 USC 1368) Executive Order 11738 and Environmental Protection Agency regulation (40 CFR Part 15), and further, Contractor agrees to promptly report all infractions to the State of Oregon, the Federal Grantor Agency, and to the U.S. Environmental Protection Agency. All subcontracts shall also be in compliance with these provisions.

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Facilities under the Title XIX Long-Term Care Facility Services Program, as soon as feasible after a proper claim is submitted and approved.

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C. Update eligibility/payment file to assure correct payment.

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A. If federal and/or state laws are amended, repealed or judicially interpreted so as to render fulfillment of this Agreement by either party not beneficial or impossible to perform, both Contractor and Division are discharged from further obligation created under terms of this Agreement, except for equitable settlement of possible overpayments or underpayments up to the date of the termination.

B. This Agreement shall remain in effect only as long as Contractor remains licensed and certified by the State Health Division.

C. This Agreement may also be terminated either by mutual consent of the Division and the Contractor, or without cause, upon 30 days' written notice by either party.

D. If Contractor's certification is voluntarily or involuntarily terminated, the Division/Type B AAA agrees to assist all Title XIX clients in moving from the decertified beds, provided that the Contractor has secured prior consent from the clients and/or their guard-

ian. In all cases, however, the Division will discontinue payment for Contractor's services no later than 30 days subsequent to the termination of this Agreement.

E. If the Division or the State Health Division has determined that a facility is deficient in areas relating to patient care or if the Health Division has made a determination of potential decertification (see Rule 416-17-090), *no* payment will be made under this Agreement by the Division for clients admitted to the facility after a date specified by the Division and until such time that the division determines that deficiencies have been corrected.

F. If Contractor does not correct deficiencies in accordance with Contractor's written plan of correction submitted to and approved by the Division or Health Division, this Agreement may be terminated upon written notice.

G. Contractor shall upon written notice from Division take immediate steps to terminate any employe that in Division's judgement is a threat to the health, safety, or welfare of any client in Contractor's facility covered by this Agreement. Termination of facility employe'(s) shall be according to facility personnel policy and procedures.

H. Contractor must notify Division at least 30 days before sale or lease of the facility and provide the name of the buyer/lessee and names, addresses, and phone numbers of owners of the business entity buying or leasing the facility covered by this Agreement.

I. No payment to buyer or lessee of the facility will be made until buyer or lessee has received a new license and certification from the Health Division, and a contract from the Senior Services Division.

J. The conviction of the Contractor, or anyone having an ownership interest in the facility, of a criminal act involving Medicaid of Medicare laws, rules, or regulations will be grounds for termination of this Agreement by the Division.

K. Any breach or violation of any of the foregoing provisions shall make this Agreement subject to termination upon 30 days' written notice by the Division.

L. Division may recoup money paid to the contractor if the Division determines that services contracted for were not provided or were not provided in an acceptable manner. If recoupment is made, the amount recouped shall not be recovered in the year-end settlement.

M. Amounts due to or from the facility from an audit settlement are payable within 30 days of receipt of the audit report. Amounts not paid to the Division within 30 days will be recouped from the next monthly vendor payment, unless an extended payment plan is approved.

PART 4

ADDENDUM TO AGREEMENT FOR PARTICIPATION IN THE TITLE XIX HEAVY COST PROGRAM CONDITIONS

1. Definitions: Nursing facility, as used in this part, means a Skilled or Intermediate Care Facility, licensed and certified to provide care under Federal and State laws, rules and regulations under Title XVIII or Title XIX.

2. This addendum is the agreement for participation in the Title XIX Heavy Cost Program, between the State of Oregon acting through its Department of Human Resources, Senior Services Division, and the Nursing Facility, hereinafter referred to as contractor. Said contract is amended as follows:

   a. Division agrees to pay Contractor a special daily rate established by Division for the care of individuals identified by Division as eligible for "heavy cost" care. The client must occupy a bed certified by the State Health Division and covered by an agreement with the Division. The "heavy cost" payment for an eligible client is in effect for a period specified by Division and extension will be reassessed as determined by Division. Contractor agrees to provide supplies and services included in the all-inclusive rate, as specified in the Title XIX Long-Term Care Facility Services Guide. In addition, Contractor will provide all exceptional nursing or personal services as required based on an assessment by the Division. The "heavy cost" rate does not include those medical services; i.e., physician, physical therapy, pharmacy, dental, etc., paid through Title XIX, Title XVIII, Veterans Administration, etc., and personal incidental items authorized for payment from the client's personal incidental allowance (see Rule 461-17-160). The heavy cost rate will be the rate established either for skilled (SNF) or intermediate (ICF) level of care.

   b. Contractor will maintain detailed, complete, and accurate records of the care provided and the costs of the

care. Records of services and costs will be made available to the Division upon request.

c. The modification, cancellation, or continuation of the arrangement set forth in this addendum will be the responsibility of Division to renegotiate with the Contractor.

[Legal sufficiency approval signatures omitted in printing]